IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 370 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CAPTAIN JOSEPH CLAMENT KANUBHAI MAHARAJ

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 370 of 2003

MR GIRISH M DAS for Petitioner No. 1

MR I.M.PANDYA, APP for Respondent No. 1

MR MA BUKHARI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 10/02/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Girish M Das appearing for the petitioner-husband and learned APP Mr.

I.M.Pandya appearing for respondent No.1. Respondent No.2-wife-Macwan Benita John is personally present.

2. Undisputedly, the petitioner-husband is a Class-III servant serving with St. Xavier's College, Ahmedabad and, Presiding Judge of the Family Court, while dealing with the application, preferred by the respondent No.2-wife under Section 125 of Code of Criminal Procedure, has, granted monthly maintenance of Rs.1000/ from the date of application i.e., 17.10.2002 vide order dated 31.3.2003 and, feeling aggrieved by the order of maintenance granted by Family Court No.3, has, challenged the order by this revision application.

3. The arguments advanced by Mr. Das is that the respondent No.2-wife has deserted the husband without any reason though the petitioner-husband was cooperative not only to the respondent No.2-wife but to her family members. He has purchased a house in the vicinity of the area where the parents of the respondent No.2-wife resides. Mr. Das has also pointed out the nature of dispute between the parties and has submitted that, when the talks for compromise between the parties were going on in the Family Court, the petitioner-husband was manhandled by some outsiders called by the in-laws and, therefore, he was compelled to leave the premises of the Family Court and, as it was not safe for him to enter the building of the Family Court, he could not attend the proceedings and, therefore, the order under challenge came to be passed.

4. I have considered the resistance put forward by the other side and the fact that the evidence led by the respondent No.2-wife has remained unchallenged in the proceedings before the Family Court. It would not be appropriate at this stage to pass any comment as to the facts qua abortion made by the respondent No.2-wife because, it may prejudice either party during the proceedings before the Family Court. Undisputedly, the petitioner-husband has filed written reply to the allegations made in the application preferred by the wife and, it would be in the interest of justice, to offer an opportunity to lead evidence of his side and to cross-examine respondent No.2-wife. Learned APP Mr. Pandya appearing for the State has also submitted that this is a fit case wherein the matter can be remanded back to the Family Court with appropriate direction.

5. I have seen the salary slip of the petitioner-husband and assessed his financial liabilities. In response to the query raised, Mr. Das

has fairly accepted that no formal application to grant interim maintenance was filed in the proceedings and the order granting maintenance of Rs.1000/- is passed at the final stage of the proceedings. The order of maintenance granted, obviously, shall have to be quashed but, with a view to protect the interest of justice, this Court can exercise powers and also can simultaneously observe that the amount of maintenance fixed by the Family Court while concluding the maintenance application should be treated as maintenance granted at interim stage and pending hearing and disposal of the maintenance application. I am told that some amount has been paid to the respondent No.2-wife but, still, some arrears required to be cleared. The petitioner-husband can be directed to clear the amount of arrears of maintenance, if any, within five months and the petitioner-husband can divide the amount of arrears in five equal installments and pay each instalment every month along with the regular amount of maintenance payable to the respondent No.2-wife as interim maintenance. For short, the amount of maintenance determined by the Family Court should be treated as an amount granted as interim maintenance and not amount of final maintenance. Order accordingly.

6. The learned Family Court is directed to proceed with the matter on merit. It will be open for the respondent No.2-wife to lead evidence and the petitioner-husband is at liberty to cross-examine all witnesses which may be examined. Obviously, respondent also shall lead evidence from his side and the learned Presiding Judge of the Family Court shall decide the matter afresh without being prejudice to the earlier decision and decision in the present revision application.

7. The application for maintenance is ordered to be expedited. Rule is made absolute in above terms.

(C.K.Buch,J)

Jayanti*